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REGIONAL AND INTERNATIONAL ACTIVITIES

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Organization of American States

ORGANIZATION OF AMERICAN STATES

AMENDMENT TO THE INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE

The Inter-American Treaty of Reciprocal Assistance, signed in Rio de Janeiro in 1947, established the collective security system in the Western Hemisphere. Twenty two Member States of the OAS are parties to this treaty, which is also known as the Rio Treaty. The treaty contains, among others, several provisions concerning the measures or steps that the Organ of Consultation of Ministers of Foreign Affairs should take for the common defense and for the maintenance of the peace and security of the Hemisphere.

A Special Committee of the OAS undertook, from 1973 to early 1975, extensive studies towards the revision of the Rio Treaty. Finally, the OAS General Assembly, at its fifth regular session held in May 1975, convoked a Conference of Plenipotentiaries for the Amendment of the Rio Treaty.

The Conference of Plenipotentiaries was held in San José, Costa Rica in July 1975. As a result, a Protocol of Amendment to the Inter-American Treaty of Reciprocal Assistance was signed on July 26, 1975.

The Protocol of Amendment changed the drafting and numbering of several articles and adopted new provisions. Art. 9 of the Rio Treaty, for example, was substantially changed and new concepts were introduced in it. It contains the definition of aggression. According to the Protocol

*The opinions expressed in this report are those of the author in his personal capacity.

of Amendment, Art. 9 expresses in paragraph I that aggression is the use of armed forces by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, the Charter of the OAS or this Treaty. It also states that the first use of armed force by a State in contravention of these instruments shall constitute *prima facie* evidence of an act of aggression, although the Organ of Consultation may, in conformity with these instruments, conclude that the determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as justification for aggression.

Under paragraph 2 of Art. 9, any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of paragraph 1 of this article, qualify as an act of aggression:

- a) Invasion by the armed forces of a State of the Territory of another State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision or arbitral award or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State, or armed attack by a State against the territory or people of another State, or any military occupation, however temporary, resulting from such invasion or attack or any annexation by the use of force of the territory of another State or part thereof;
- b) bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- c) the blockade of the ports or coasts of a State by the armed forces of another State;
- d) an attack by the armed forces of a State on the land, sea or air forces of another State;
- e) the use of the armed forces of one State which are located within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

- f) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- g) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein;
- h) the Organ of Consultation may determine that other specific cases submitted to it for consideration, equivalent in nature and seriousness to those contemplated in this article, constitutes aggression, under the provisions of the Charter of the United Nations, the Charter of the Organization of American States or this treaty.

Another important modification was that of Art. 17. The first paragraph of this article provides that the Organ of Consultation shall adopt its decisions or recommendations by a vote of two-thirds of the State Parties, except as provided for in the second paragraph, which establishes that to rescind the measures taken pursuant to Art. 8 of the Treaty, a vote of an absolute majority of the States Parties shall be required. This means that for the application of sanctions against a State Party, the vote of two-thirds of the said Parties is required, but for rescinding the sanctions or measures applied, the vote of an absolute majority is necessary.

Art. 20 was also modified to establish that in addition to decisions whose application is binding on the State Parties, the Organ of Consultation may also adopt recommendations relating to the said Parties. The article also provides that if the Organ of Consultation takes measures to which this article refers against a State, any other State Party to the Treaty that finds itself confronted by special economic problems arising from the carrying out of the measures in question shall have the right to consult the Organ of Consultation with regard to the solution of those problems. No State shall be required to use armed forces without its consent.

The Protocol of Amendment introduced four new articles, numbered as follows: 6, 11, 12 and 27.

In accordance with Art. 6 any assistance the Organ of Consultation may decide to furnish a State Party may not be provided without consent of that State. Art. 11 provides that the Parties recognize that, for the maintenance of peace and security in the Hemisphere, collective economic security for the development of the Member States of the OAS must also

be guaranteed through suitable mechanisms to be established in a special treaty. Art. 12 establishes that nothing stipulated in the Treaty shall be interpreted as limiting or impairing in any way the principle of non-intervention and the right of all States to choose freely their political, economic and social organization. Art. 27 contains provisions on the amendment of the Treaty.

According to other provisions of the Protocol, it shall remain open for signature by the State Parties to the Inter-American Treaty of Reciprocal Assistance and shall be ratified in accordance with their respective constitutional procedures. The treaty itself also remains open for signature by other Member States of the OAS.

The Protocol shall enter into force among the ratifying States when two thirds of the signatory States have deposited their instruments of ratification, and shall enter into force with respect to the remaining States when they deposit their ratifications.

When the Protocol enters into force, the General Secretariat of the OAS shall prepare a consolidated text of the Inter-American Treaty of Reciprocal Assistance that shall include the parts of the Treaty that have not been amended and the amendments introduced by the Protocol. This text shall be published upon approval by the Permanent Council of the OAS.

The Inter-American Treaty of Reciprocal Assistance shall continue in force between the State Parties to the Treaty. Once the Protocol of Amendment enters into force, the Treaty as amended shall apply among the States that have ratified the Protocol.

INTER-AMERICAN JURIDICAL COMMITTEE

The Inter-American Juridical Committee held a regular meeting during July-August 1975 at its headquarters in Rio de Janeiro. It considered several topics and approved a report on industrial property, a revised draft convention on the identification and protection of the archaeological, historical and artistic heritage of the American nations, a resolution and an *exposé des motifs* on the Panama Canal. It took note of the preliminary report by the Rapporteur on the jurisdictional immunity of States.

The Committee also received reports from three members who acted as Observers of the Committee at the following meetings: Fifth Regular

Session of the OAS General Assembly held in Washington in May 1975; Geneva session of the Third United Nations Conference on the Law of the Sea, March-May 1975; and the 1975 meeting of the International Law Commission of the United Nations.

Further, the Committee decided to send to the OAS the reports prepared by several of its members on multinational corporations. On this topic the Committee decided that at its next meeting to be held in January-February, 1976 it will prepare an opinion on the matter, as well as a draft convention which will contain some standards concerning the conduct of transnational enterprises.

COURSE ON INTERNATIONAL LAW

This course is an activity organized by the Inter-American Juridical Committee (CJI). It has the support of the General Assembly of the OAS, and is held with the cooperation of the Office of Fellowships and Training and the Department of Legal Affairs of the OAS General Secretariat, as well as of the Getúlio Vargas Foundation headquartered in Rio de Janeiro.

The members of the Committee cooperate by delivering lectures and conducting seminars and round tables. Also invited to participate are distinguished professors and experts in the various topics covered.

The first course was held at the headquarters of the Getúlio Vargas Foundation in September-October 1974. The February 1975 issue of the *Lawyer of the Americas* contains information on the first course, pages 126-127. The report of the Director of the Course was published by the OAS General Secretariat as document CP/INF.610/74 on December 13, 1974.

In its annual report to the fifth regular session of the OAS General Assembly held in May 1975, the Inter-American Juridical Committee made special reference to the Course on International Law. During the deliberations of the First Committee of the Assembly, several delegations of the Member States expressed very favourable opinions concerning the course.

In its Resolution AG/RES.185 (V-0/75) the General Assembly decided "to accept with satisfaction the initiative of the Inter-American Juridical Committee to organize the Course on International Law, and to provide that this activity shall be conducted on a permanent basis through the holding of one such course every year." In paragraph 6 of the same

Resolution the General Assembly instructed "the General Secretariat to include in the program-budget of the Organization for 1976-78 biennium the funds needed to hold the course every year, as well as enough fellowships to enable at least one fellow from each Member State to participate each year, and funds for the administration of the course and publication of the texts of lectures given therein."

The second course was held from July 21 to August 15, 1975. Fourteen fellowships were awarded by the Fellowship Program of the OAS to persons of fourteen different American countries. Among these, there were six law professors, six diplomats, one expert on integration, and one member of the Legislative Assembly of his country. There were also fifteen participants selected by the Getúlio Vargas Foundation, among them, law professors, judges, high government officials and distinguished lawyers.

The lectures delivered during the second course dealt with the following main topics: Multinational companies or enterprises; legal aspects of economic integration; private international law; the inter-American system; and the law of the sea.

The results of the second course were excellent, and both the participants and professors commented very favorably on it. As the Inter-American Juridical Committee observed, the first course was also "completely successful."

The third course will be held in July-August, 1976, also in Rio de Janeiro. The main topics of the third course will be: Multinational commercial companies and transnational enterprises; the inter-American system; law of the sea; and private international law.

The report that the Director of the Course on International Law prepared on the second course was published by the OAS General Secretariat on September 12, 1975 (CP/INF.723/75).

The Director of the Course on International Law is Dr. Isidoro Zannotti, Chief of the Division of Codification and Legal Integration of the Department of Legal Affairs of the OAS General Secretariat.

UNITED NATIONS

INTERNATIONAL LAW COMMISSION

The International Law Commission of the United Nations held its twenty-seventh session from May 5 to July 25, 1975 in Geneva. It con-

sidered the following main topics: State responsibility; succession of States in respect to matters other than treaties; most favoured-national clause; and treaties concluded between States and international organizations, or between two or more international organizations.

State Responsibility

As a result of work accomplished in the two previous sessions and at the twenty-seventh session, the Commission adopted draft Art. 1 to 15 on State responsibility. These articles were reproduced in the report of the Commission for the information of the General Assembly.

Art. 1 to 4 establish general principles, as follows: Every international wrongful act of a State entails the international responsibility of that State. Every State is subject to the possibility of being held to have committed an international wrongful act entailing its international responsibility. There is an international wrongful act by a State when: a) conduct consisting of an action or omission is attributable to the State under international law, and b) that conduct constitutes a breach of an international obligation of the State. An act of State may only be characterized as internationally wrongful by international law. Such characterization cannot be affected by the characterization of the same act as lawful by internal law.

Art. 5 to 15 deal with the act of the State under international law. Art. 6 provides that the conduct of an organ of the State shall be considered as an act of that State under international law, whether that organ belongs to the legislative, executive, judicial or other power, whether its functions are of an international or an internal character and whether it holds a superior or a subordinate position in the organization of the State.

According to Art. 8, the conduct of a person or group of persons shall also be considered as an act of the State under international law if: a) it is established that such person or group of persons was in fact acting in behalf of that State; or b) such person or group of persons was in fact exercising elements of the governmental authority in the absence of the official authorities and in circumstances which justified the exercise of those elements of authority. Under Art. 11, the conduct of a person or a group of persons not acting on behalf of the State shall not be considered as an act of the State under international law.

Art. 13 provides that the conduct of an organ of an international organization acting in that capacity shall not be considered as an act of

a State under international law by reason only of the fact that such conduct has taken place in the territory of that State or in any other territory under its jurisdiction.

Succession of States in Respect of Matters Other Than Treaties

On this topic the International Law Commission, at its twenty-fifth and twenty-seventh sessions, adopted the texts of draft Art. 1 to 9, 11 and X.

Art. 1 to 3 contain introductory provisions; Art. 3 defines certain terms.

Part I of the draft articles deals with succession of State property; section 1 contains the general provisions (Art. 4 to 9, 11 and X). Art. 4 provides that the articles in the present Part apply to the effects of succession of States in respect to State property. For the purposes of Art. 5 "State property" means property, rights, and interests which, on the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State.

Art. 6 establishes that a succession entails the extinction of the rights of the predecessor State and the establishment of the rights of the successor State to such of the State property as passes to the successor State in accordance with the provisions of present articles. According to Art. 7, unless otherwise agreed or decided, the date of the passing of State property is that of the succession of States. Art. 8 provides that without prejudice to the rights of third parties, the passing of State property from the predecessor State to the successor State in accordance with the provisions of the present articles shall take place without compensation, unless otherwise agreed or decided.

Most-Favoured-Nation Clause

During its twenty-fifth and twenty-seventh sessions the International Law Commission approved the text of draft Art. 1 to 21 on the most-favoured-nation clause.

Art. 1 establishes that the present articles apply to most-favoured-nation clauses contained in treaties between States. Most-favoured-nation clause, according to Art. 4, means a treaty provision whereby a State undertakes to accord most-favoured-nation treatment to another State in an agreed sphere of relations. Most-favoured-nation treatment, in accordance with Art. 5, means treatment by the granting State to the bene-

ficiary State or to persons or things in a determined relationship with that State, not less favourable than treatment by the granting State to a third State or of persons or things in the same relationship with a third State.

Nothing in the present articles shall imply that a State is entitled to be accorded most-favoured-nation treatment by another State otherwise than on the ground of a legal obligation (Art. 6). According to Art. 7, the right of the beneficiary State to obtain from the granting State treatment extended by the latter to a third State or to persons or things in a determined relationship with a third State arises from the most-favoured-nation clause in force between the granting State and the beneficiary State.

Other draft articles contain provisions on such matters as the effect of unconditional most-favoured-nation clause; scope of rights under a most-favoured-nation clause; irrelevance of the fact that treatment is extended gratuitously or against compensation; right to national treatment under a most-favoured-nation clause; and commencement of enjoyment of rights, termination or suspension of enjoyment of rights, exercise of rights—under a most-favoured-nation clause.

Treaties Concluded Between States and International Organizations or Between International Organizations

This topic was also considered by the International Law Commission during its twenty-seventh session. As a result of its deliberations during its twenty-sixth and twenty-seventh sessions, the Commission adopted draft Art. 1 to 4, 6 to 18.

Part I of the draft articles contains the introduction (Art. 1 to 4); Art. 2 defines several terms.

Part II, Art. 6 to 18, deals with conclusion and entry into force of treaties. In accordance with Art. 6, the capacity of an international organization to conclude treaties is governed by the relevant rules of that organization. Art. 7 provides that a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty between one or more States and one or more international organizations or for the purpose of expressing the consent of the State to be bound by such a treaty if: a) he produces appropriate full powers; or b) it appears from practice or from other circumstances that person is considered as representing the State for such purposes without having to produce full powers.

Paragraph 2 of Art. 7 provides that by virtue of their functions and without having to produce full powers, the following are considered as representing their States: a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty between one or more States and one or more international organizations; b) heads of delegations of States to an international conference, for the purpose of adopting the text of a treaty between one or more States and one or more international organizations; c) heads of delegations of States to an organ of an international organization; d) heads of permanent missions to an international organization, for the purpose of adopting the text of a treaty between one or more States and that organization; and e) heads of permanent missions to an international organization, for the purpose of signing, or signing *ad referendum*, a treaty between one or more States and that organization.

Other articles cover additional matters. For example, the subsequent confirmation of an act performed without authorization; adoption of the text of a treaty; authentication of the text; means of establishing consent to be bound by a treaty; signature, ratification, act of formal confirmation, acceptance or approval as a means of establishing consent to be bound by a treaty; and deposit of instruments of ratification.

Other Activities of the International Law Commission

The report of the International Law Commission on the work of its twenty-seventh session (A/10010, dated August 8, 1975), also gives an account concerning cooperation with other international organizations. It makes specific reference to the Asian-African Legal Consultative Committee, the European Committee on Legal Cooperation of the Council of Europe, and the Inter-American Juridical Committee of the OAS. It also mentions the Gilberto Amado Memorial Lecture, and the International Law Seminar.

The Commission decided to hold its next session at the United Nations Office in Geneva from May 3 to July 23, 1976.

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

UNCITRAL held its eighth session at Geneva from April 1 to 17, 1975. It considered the following principal topics: International sale of

goods; international payments; international legislation on shipping; international commercial arbitration; multinational enterprises; and liability for damage caused by products intended for or involved in international trade.

International Sale of Goods

The Commission studied the report of its Working Group on the International Sale of Goods at its sixth session held in January-February, 1975.

At its eighth session, the Commission decided to take note with appreciation of the report of the Working Group to request the Group to continue its work under the terms of reference set forth by the Commission at its second session, and to complete the work expeditiously.

It also requested the Secretary General of the United Nations: a) to transmit the draft Convention on the International Sale of Goods, when completed by the Working Group, to Governments and interested international organizations for their comments, and when doing so, to recommend that they should, as far as possible, focus their observations on fundamental issues in view of the fact that they would again be invited to submit comments and amendments to the draft convention in connection with a conference of plenipotentiaries to which the draft convention, as approved by the Commission, would be submitted for adoption; and b) to prepare an analysis of such comments for consideration by the Commission at its tenth session.

International Payments

UNCITRAL considered the report of the Working Group on International Negotiable Instruments, which has been working in the preparation of a draft uniform law on international bills of exchange. The uniform law is intended to establish uniform rules applicable to an international negotiable instrument (bill of exchange or promissory note) for optional use in international payments.

The Commission took note of the report of the Working Group, and requested that it continue its work under the terms of reference set forth by the Commission at its fifth session, and to complete the work expeditiously.

International Legislation on Shipping

UNCITRAL has another Working Group dealing with international legislation on shipping. The Working Group completed the second reading of the preliminary version of a draft convention on the liability of carriers of goods by sea. The Commission decided to consider this draft convention at its ninth session.

International Commercial Arbitration

At its eighth session the Commission considered a report by the Secretary General setting forth a preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade. The Commission requested the Secretary General to prepare a revised draft of these rules, taking into account the observations made on the preliminary draft in the course of its eighth session, and to submit the revised draft to the Commission at its ninth session.

Multinational Enterprises

At its eighth session UNCITRAL had before it a report of the Secretary General setting forth: a) a description of the studies and activities within the United Nations system in respect to multinational enterprises, especially those studies and activities concerning legal problems; b) an analysis of replies to the questionnaire received from Governments and interested organizations and an analysis of studies within the United Nations system; c) a description of existing national legislation affecting multinational enterprises; and d) conclusions and suggestions for future work.

According to the report of the Commission, during the consideration of the report of the Secretary General there was general agreement that the legal issues in respect to multinational enterprises were closely inter-related with those having an economic, social and political nature and that, at the present time, no specific legal issues susceptible of action by UNCITRAL had been identified. Several representatives were of the view that UNCITRAL should engage in a program of studies intended to identify legal issues on which it might take action. Among the subjects suggested for study by the Commission were: a) the legal provisions in company laws, investment laws and the like that are designed to elicit information about the activities of multinational enterprises; and b) the feasibility of developing an information system.

Other representatives were of the opinion that UNCITRAL should follow closely the work of the newly created Commission on Transnational Corporations and the studies to be carried out by the Information and Research Center on Transnational Corporations.

The Commission decided to maintain on its agenda the item concerning multinational enterprises, and to inform, through its Chairman, the Commission on Transnational Corporations that UNCITRAL had not taken a definitive decision concerning its program of work in the field, but would continue to keep the subject under review.

Liability for Damage Caused by Products Intended for or Involved in International Trade

The U.N. General Assembly, on December 12, 1973, invited UNCITRAL to consider the advisability of preparing uniform rules on civil liability of producers for damage caused by their products intended for or involved in international sale or distribution.

At its eighth session UNCITRAL considered a report by the Secretary General on "liability for damage caused by products intended for or involved in international trade."

According to the report of UNCITRAL on its eighth session, the discussion of the report of the Secretary General revealed a large measure of agreement on several matters. It was indicated that many of the products manufactured today had the potential of causing injury to persons or damage to property. Apart from giving rise to legal problems, the consequences of such injury or damage had both a social and an economic impact. One aspect of this was the feeling that the law should give adequate protection to the consumer of products. Another aspect was the need to consider the availability and cost to producer and consumer of liability insurance. It was generally acknowledged that the preparation of uniform rules on products liability posed serious questions. At a technical level, it would be necessary to evolve a set of legal rules which would be acceptable within the framework of different legal systems.

The Commission decided to continue work on this subject and, to this end has requested the Secretary General to prepare a further report for consideration by the Commission, if possible at its tenth session, that would examine, *inter alia*, the following issues:

- a) the extent to which the absence of unified rules on products liability affects international trade;

- b) the practicability and advantage of unification at a global level, as opposed to unification at a regional level;
- c) the relationship between this subject and schemes of insurance which have been or may be developed in relation thereto;
- d) the extent to which and the manner in which liability may be limited, and the possible effects of different techniques of limitation;
- e) the types of product in regard to which liability should be imposed;
- f) the classes of persons on whom liability may be imposed and the classes of persons in whose favor liability may be imposed, with particular reference to the protection of consumers;
- g) the kinds of damage for which compensation may be recoverable;
- h) the kinds of transaction falling within the scope of proposed uniform rules; and
- i) the relationship between any proposed uniform rules and standards of safety in relation to products which are mandatorily imposed in many States by national law.

Next Session of UNCITRAL

UNCITRAL decided that its ninth session will be held at New York from April 26 to May 21, 1976, during which a Committee of the Whole would be established. The Commission would meet from April 26 to May 19, 1976 and consider the draft convention on the carriage of goods by sea, prepared by the Working Group on International Legislation on Shipping. The Committee of the Whole would meet from April 26 to May 7, 1976.

The seventh session of the Working Group on the International Sale of Goods will be held at Geneva from January 5 to 16, 1976. The Working Group on International Negotiable Instruments will meet in New York from February 2 to 13, 1976.

DIPLOMATIC ASYLUM

It is well known that there are several inter-American conventions on asylum. On December 4, 1974 the United Nations General Assembly adopted Resolution 3321 (XXIX) inviting the Member States to express,

if they so wished, their views on the question of diplomatic asylum, and to communicate those views to the Secretary General not later than June 30, 1975.

United Nations document A/10139 (Part I), dated September 2, 1975, contains the views expressed by the governments of several U.N. Member States, for example, Argentina, Bolivia, Ecuador and Uruguay. These countries expressed opinions in favor of the institution of diplomatic asylum, and made references to the inter-American conventions on the matter. The government of Uruguay made several comments and indicated that it considers it essential to include references to terrorism in future conventions relating to asylum and extradition.

The Government of Uruguay also stated that the institution of diplomatic asylum has been built into American international law with the assistance and active participation of Uruguay, and that it is resolved to collaborate in its further evolution and expansion elsewhere in the world. It also pointed out that the eminently humanitarian origins of this institution are not, however, consonant with the practices of the modern subversive movements that are now ravaging much of the world, including some of the most highly developed countries. Consequently, the Government of Uruguay indicates that in its opinion the protection of this noble institution could hardly be extended to those engaging in violence and crime.

It is worthwhile to mention some opinions on asylum expressed by governments of countries outside the Western Hemisphere.

The government of Australia stated that in pressing for discussion of this question at the United Nations it is moved by humanitarian considerations so relevant to the development and application of the law. It recalled that there is no novelty in the pursuit by the U.N. General Assembly of humanitarian objectives, when it dealt with such subjects as self-determination of peoples, the ending of colonialism, and the promotion of human rights. It indicated that when the question of diplomatic asylum was discussed at the Sixth Committee of the General Assembly in 1974 the essentially humanitarian purpose of diplomatic asylum was universally recognized. The government of Australia also pointed out that it has been recognized by a number of representatives in the Sixth Committee that the subject of diplomatic asylum warrants an extended substantive discussion. In determining the end towards which this discussion should move, one thing is clear. Nothing should be said nor should anything be done to weaken the institution of diplomatic asylum as developed

and practiced by States of Latin America. Beyond that, the government of Australia hopes that there will be a thorough examination of the question of diplomatic asylum with a view to the achievement of substantial agreement for the initiation of a process of codification of the subject.

The Belgian government considered that diplomatic asylum must be viewed from the standpoint of humanitarian considerations, but that the granting of diplomatic asylum implies derogation from the sovereignty of the granting State. Once the purely humanitarian nature of the granting of asylum is established in principle, the derogation from State sovereignty cannot be viewed as interference in the domestic affairs of States. The Belgian government, however, indicated that it is not convinced that it would be useful to draw up a legal instrument on principles governing the practice of diplomatic asylum, and that it regards the granting of diplomatic asylum as an option, but does not view it as a right that can be claimed by any person seeking asylum.

The Government of Canada stated that it is the Canadian view that no general right of asylum on diplomatic premises is recognized in contemporary international law.

A somewhat negative comment on diplomatic asylum is that of the French Government. In its observations, France pointed out that, unlike territorial asylum, diplomatic asylum is not an institution of international law, and that there is no generally recognized customary law on the subject. It further stated: "Diplomatic asylum is an essentially Latin American practice. Its development in that region and its embodiment in successive conventions are largely due to extra-juridical factors, such as good-neighbourly relations between the States of the South American continent, their political interests and their common legal systems and traditions." What would the Latin American jurists say about this view?

The Polish government considered diplomatic asylum as a typical regional institution, customarily alien to States outside the region of Latin America. It also stated that it might be considered an institution limiting the sovereignty of a territorial State and as such may be construed as interference in its internal affairs.

The Swedish government considered that there is no need to codify the circumstances surrounding the humanitarian obligations in respect to diplomatic asylum. It is of the view that it would not seem immediately necessary to elaborate an international legal instrument in a field where humanitarian rather than strictly legal considerations determine the ac-

tion of States. The situation is different in regions where the institution of diplomatic asylum is recognized as a legal institution and where, for that reason, it may be appropriate and desirable to lay down legal rules on this subject in regional conventions or other international instruments.

TERRITORIAL ASYLUM

The United Nations General Assembly, in Resolution 3272 XXIX of December 10, 1974, established a Group of Experts on the Draft Convention on Territorial Asylum. The Group met at Geneva in April-May, 1975 to review a draft convention on the subject. The report of this group was published in document A/10177 dated August 29, 1975.

Art. 1 of the draft provides that each Contracting State, acting in the exercise of its sovereign rights, shall use its best endeavours in a humanitarian spirit to grant asylum in its territory to any person eligible for the benefits of this Convention. On the application of the convention, Art. 2 establishes that a person shall be eligible for the benefits of this convention if, owing to well-founded fear of (a) persecution for reasons of race, religion, nationality, membership in a particular social group or holding a political opinion, including the struggle against colonialism and apartheid, or (b) prosecution or punishment for acts directly related to the persecution set forth in (a) and is unable or unwilling to return to the country of his nationality, or, if he has no nationality, the country of his former habitual residence.

According to Art. 4, a person seeking asylum at the frontier or in the territory of a Contracting State shall be admitted provisionally to or permitted to remain in the territory of that State pending a determination of his request, which shall be considered by a competent authority.

Art. 5 deals with international solidarity. Whenever a Contracting State experiences difficulties in the case of a sudden or mass influx or for other compelling reasons, in granting, or continuing to grant, the benefits of this convention, each Contracting State shall, at the request of that State, through the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may replace it, or by any other means considered suitable take such measures as it deems appropriate, in conjunction with other States or individually, to share equitably the burden of that State.

In accordance with Art. 8, the grant of territorial asylum is a peaceful and humanitarian act, shall not be regarded as an act unfriendly to any other State, and shall be respected by all States.